



# Lesson Plan Outline and Presentation Page

## Criminal Law - Section A2.1

**Unit Goals:** To develop the necessary knowledge of the Oregon Criminal Code and laws to recognize the majority of the criminal laws police enforce, their elements and classification.

**Performance Objectives:** (Evaluated by Written Exam)

Plan Updated : June-98

Performance Objectives and Instructional Goals	Outline and Presentation
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### B. Purpose of Course

1. Explain Sources of Law
  - a. Federal
  - b. Oregon
2. Explain Crime Elements
  - a. classifications
  - b. *actus reus and mens rea*
    - 1) mental state
    - 2) examples of assaults
    - 3) examples of self defense
  - c. parties to crime
3. Explain Inchoate Crimes
  - a. attempt
  - b. conspiracy
  - c. solicitation
4. Explain Criminal Trial Procedure

OH #1

**II. Sources of Law****A. Federal Constitution**

1. enacted in 1787
2. Bill of Rights enacted in 1791
3. **First Amendment** - religion, speech, press and assembly.
  - a. **Speech**: obscenity, panhandling, disorderly conduct, noise ordinances, political demonstrations, pornography
  - b. **Assembly**: loitering, vagrancy, picketing, demonstrations
  - c. **Religion**: avoidance of taxes, drug use, medical treatment
  - d. **Press**: victims' right to privacy, confidentiality of internal affairs & criminal investigations
4. **Second Amendment** - Right to keep and bear arms (possess, carry, use)
5. **Third Amendment** - Quartering soldiers in private homes
6. **Fourth Amendment** - Prohibition against unreasonable search and seizure, warrants need probable cause, exclusionary rule
7. **Fifth Amendment** - Privilege against compulsory self-incrimination, double jeopardy, due process
8. **Sixth Amendment** - Speedy public trial, confront witnesses, right to counsel, compulsory process
9. **Seventh Amendment** - right to jury in civil actions
10. **Eighth Amendment** - no cruel or unusual punishment, no excessive bail or fines (jail conditions, overcrowding, conjugal visits, libraries, death penalty)
11. **Ninth Amendment** - limits powers of government; people retain all other powers
12. **Tenth Amendment** - fed v. state rts.; those not designated to govt. retained by people

OH #2

OH #3

OH #4

OH #5

OH #6

OH #7

OH #8

OH #9

OH #10

OH #11

## Outline and Presentation

### 13. Other Amendments

- a. **13th** - abolished slavery
- b. **14th** - equal protection; states cannot prohibit activities or restrict rights guaranteed by fed constitution
- c. **15th** - no voting discrim (race)
- d. **16th** - income tax
- e. **18th** - prohibition
- f. **19th** - women vote
- g. **21st** - repealed prohibition
- h. **26th** - voting age to 18

B. **US Supreme Court.** This is the highest appellate court. The Supreme Court hears cases arising under the Constitution, Congressional Acts and treaties (original jurisdiction). The Court also has appellate jurisdiction. Cases come to the Court either on appeal (jurisdiction is mandatory, but very few cases come up this way) or by *certiorari*. A *writ of certiorari* is an appeal from federal appellate courts, or the highest state courts regarding the constitutionality of a federal or state statute, or when a state law allegedly violates federal law. The court has complete discretion regarding cases appealed on certiorari. Four of the nine justices must agree to hear the case before cert. will be granted.

There are nine justices, nominated by the president and approved by the senate for life. They are William Rehnquist (chief justice), Antonin Scalia, Sandra Day O'Connor, Clarence Thomas, David Souter, William Kennedy, John Paul Stevens, Ruth Bader-Ginsberg and Steven Breyer.

Most Supreme Court cases concerning criminal justice deal with procedural law issues (Miranda, Terry v. Ohio, Tennessee v. Garner).

Supreme Court opinions are published in one of three series of books. The official citator is U.S. Supreme Court Reports, published by the Court. The abbreviation is US. The unofficial reporters are Supreme Court Reports (West) which is abbreviated S.Ct. and Lawyer's Edition, abbreviated L.Ed.

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- C. **Federal Appellate Courts** are divided into Circuits. Oregon and the western US are in the Ninth Circuit (OR, CA, NV, ID, Mont, AZ, WY, NM, AK, HI). The Circuit Courts hear appeals from US District Court opinions and from state courts.

The opinions of the Circuit Courts are published in the Federal Reports (F., F.2d, etc.). The unofficial reporters are regional and published by West (e.g. Pacific Reporter, etc.)
- D. **The Federal District Courts** are the trial courts for the federal system. Opinions are infrequently published and appear in the Federal Supplement or F.Supp.
- E. Congress is a source of federal law. It enacts legislation, which is signed into law by the President. All federal criminal laws have been codified, or enacted by Congress and approved by the president. Examples are the Assault Weapons Ban, the Brady Bill, the Omnibus Crime Bill, etc. These laws can be found in the US Codes or USC.
- F. Oregon Constitution was enacted in 1859. Numerous amendments have been added. The constitution models the federal constitution and provides similar safeguards against unreasonable search and seizure, cruel and unusual punishment, excessive bail, right to jury, freedom of speech and religion, etc.
- G. The Oregon Supreme Court is made up of 7 justices. It is the highest appellate court in Oregon and hears appeals from the lower appellate court. It also would rule on the constitutionality of Oregon laws. Opinions are published in Oregon Reports (OR).
- H. The Oregon Court of Appeal hears appeals from trial courts. The court sits in 3 judge panels. Opinions are published in Oregon Appellate Reports (OrApp).
- I. The Oregon Legislature enacts laws which are then published in the Oregon Revised Statutes (ORS)). The legislature sits every 2 years.

### III. Elements of Crimes

A. **Classifications**. Offenses are classified as either crimes (subject to possible imprisonment) or violations or infractions (fine, forfeiture or other civil penalty).

Crimes are further classified as either felonies, where the maximum period of imprisonment possible is greater than one year, or misdemeanors, where the maximum term of imprisonment is less than one year.

Unclassified felonies, such as murder and aggravated murder, include the specific sentence options in the language of the statute. Class A Felonies are punished by a term of imprisonment up to 20 years and a fine up to \$300,000. Class B Felonies are punished by a term up to 10 years and a fine up to \$200,000. Class C Felonies are punished by a term up to 5 years and a fine up to \$100,000. Class A Misdemeanors are punished by a term of imprisonment of 1 year and a fine of \$5,000. Class B Misdemeanors are punished by a term of 6 months and a fine of \$2,000. Class C Misdemeanors are punished by a term of 1 month and a fine of \$1,000. Felony sentences are indeterminate and misdemeanor sentences are definite.

Overhead of  
Grid / Handouts

There needs to be mention here regarding the sentencing guideline / grid and Measure 11

B. **Requirements for Criminal Culpability**

1. In order to have criminal culpability in Oregon, the state must establish two preliminary elements.

The state must show that the suspect committed a guilty act (*actus reus*). Bad thoughts alone will not be punished. The act must be voluntary and not reflexive or convulsive.

In addition, the state must prove that concurrent with the guilty act, the suspect had the requisite mental state, or *mens rea*, as required by the particular statute.

2. There are 4 mental states recognized by Oregon courts.

**Intentionally** requires that the suspect meant to do the act. The suspect is said to have acted with a conscious objective to cause the result or engage in the particular conduct. For example, acts which involve planning or preparation are intentional.

**Knowingly** requires proof that the suspect acted with an awareness that his conduct was of a particular nature or that a particular circumstance existed. For example,

**Recklessly** aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or the circumstance exists.

**Criminal Negligent** fails to be aware of substantial and unjustifiable risk that the result will occur or the circumstance exists.

#A2-073

C. Use of **OREGON CRIMINAL CODE BOOK** to define terms

1. Sexual Intercourse :
2. Deviate Sexual Intercourse :
3. Sexual Contact :
4. Forcible Compulsion :
5. Building :
6. Premises :
7. Dwelling :
8. Enter or Remain Unlawfully :

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**#A2-001**  
ORS 161.015(7)

**#A2-002**  
ORS 161.015(8)

**#A2-003**  
ORS 161.015(1)

**#A2-004**  
ORS 161.015(2)

**#A2-005**  
ORS 161.015 (3)

9. Custody :
10. Correctional Facility :
11. Physical Injury : An injury that impairs a person's physical condition, **or** causes substantial pain.
12. Serious Physical Injury :
  - a. Creates substantial risk of death, **or**
  - b. Causes serious & protracted disfigurement, **or**
  - c. Causes protracted impairment of health, **or**
  - d. Causes protracted loss or impairment of the function of a bodily organ.
13. Dangerous Weapon : Any instrument, article or substance which under the circumstances in which it is used, attempted to be used, or threatened to be used, is **readily capable of causing death or serious physical injury**.
14. Deadly Weapon : Any instrument , article or substance **designed for and presently capable** of causing death or serious physical injury.
15. Deadly Physical Force : Physical force that under the circumstances in which it is used is **readily capable** of causing death or serious physical injury.

## A2.2 – Homicides / Assaults / Menacing / Recklessly Endangering

**IV. Crimes Against Persons****A. Homicide**ORS 163.005  
OH#A2-006  
OH  
ORS 163.115

OH

1. **Criminal Homicide** occurs if without justification or excuse the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being. The victim must be alive and born at time of killing (does not apply to fetuses)
2. **Murder** is an intentional homicide.

Example: Fred has hated Thomas for years and spends all of his free time fantasizing about strangling his "little buddy". Finally, after weeks of planning and preparation, Fred lures Thomas away from their wives with promises of a "night bowling with the boys" at the local bowling alley. Before reaching the bowling alley, Fred has Thomas join him outside the car in a deserted part of town, where Fred says, "Thomas, you no-good little weasel. I should have put myself out of misery years ago by getting rid of you." Whereupon Fred bashes in Thomas' skull with a 14 pound bowling ball.

3. **Felony Murder** is the charge when a death occurs while the suspect is committing, attempting to commit or during immediate flight from commission of a designated felony crime. The death must be of non-participant. The qualifying felonies are: arson 1, criminal mischief 1 by means of an explosive, burglary 1, escape 1, kidnapping 1 or 2, robbery 1, felony sex crimes, or compelling prostitution. Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree as defined in ORS

## Outline and Presentation

163.175 (1)(a) or (b) and the victim is under 14 years of age.

It is an affirmative defense if :

- a. there is more than one participant, **and**
- b. did not commit homicidal act or in any way solicit, request, command, importune, cause or aid in the commission of homicidal act.
- c. was not armed with a dangerous or deadly weapon ;
- d. Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; **and**
- e. Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

4. **Murder by Abuse** occurs when the suspect recklessly, under circumstances indicating an extreme indifference to the value of human life, causes the death of child under 14 or a dependent person. **and**

- a. The suspect must have previously engaged in a pattern of assault or torture of the victim or another child under 14 yrs. of age or dependent person, **or**
- b. the death must have been caused by neglect or maltreatment.

“Assault” means to intentionally knowingly or recklessly cause physical injury to another person.

“Torture” means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

“Neglect” is defined as failing to provide adequate food, clothing, shelter or medical care that is likely to

endanger the health or welfare of the child or dependent person.

"Pattern or Practice" means one or more previous episodes.

Examples: 1) Disabled person meets a "nurse" and marries her so she will take care of him. He is unable to care for himself and is wheelchair confined. She places him in a reclining chair and leaves him there for months. No medical care, no toileting, no hygiene. Pressure sores become infected, blood becomes toxic, he dies.

2) Oregon family starting a new business becomes so engrossed in project that they "forget" to feed their baby. Older children can barely fend for themselves. Home is squalid. Baby starves to death.

5. **Aggravated Murder** occurs when one of the following "special circumstances" is present. The maximum penalty possible for Aggravated Murder is the death penalty. Another possibility is life without parole, or life (minimum 30 years).

Special Circumstances:

- a. murder for hire,
- b. solicited murder,
- c. prior homicide conviction (manslaughter 1 or murder),
- d. more than one victim in the same criminal episode,
- e. during the course of torture or maiming,
- f. the victim of the intentional homicide was a person under the age of 14 years,
- g. the victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system ;

- 1) A police officer
- 2) A correctional, parole or probation officer or other person charged with the duty of custody, control or supervision of convicted persons.
- 3) A member of the Oregon State Police
- 4) A judicial officer as defined in ORS 1.210
- 5) A juror or witness in a criminal proceeding.
- 6) An employee or officer of a court of justice or
- 7) A member of the State Board of Parole & Post-Prison supervision.

h. the defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.

- i. caused by explosives,
- j. effort to conceal crime or identity of perpetrator.
- k. after escape.

6. **Aggravated Felony Murder** is felony murder committed intentionally and personally by the defendant.
7. **Manslaughter I** is the charge when there is a criminal homicide which is committed recklessly under circumstances manifesting an extreme indifference to the value of human life, or which is committed intentionally under the influence of an extreme emotional disturbance. or murder by abuse recklessly caused but not under circumstances manifesting extreme indifference to the value of life.

Examples: 1) Two teens agree to play "William Tell" with a bow and arrow. Suspect teen shoots arrow at victim teen's head in effort to pierce apple. Misses apple and arrow lodges in victim's brain, killing him instantly. 2) Man arrives home during day to find wife in bed with his best friend. In a fit of rage he

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OH  
ORS 163.125

grabs shotgun from closet and fires at friend, striking him in the torso, killing him instantly.

8. **Manslaughter II** occurs when a death is committed recklessly, or when someone intentionally causes or aids another in committing suicide ; except as authorized by the Assisted Suicide Law. **or** Murder by Abuse when caused with criminal negligence but not under circumstances manifesting extreme indifference to the value of life. This is a B felony.

Examples: 1) driving under the influence with some indications of bad driving;

*(Stacy Heyworth has agreed to develop this section - difference btwn Man 1 and Man 2)*

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ORS 163.145

9. **Criminally Negligent Homicide** is the charge when someone causes the death of another with criminal negligence. C Felony.

Criminal negligence is defined as failing to be aware of a substantial and unjustifiable risk that the result will occur or that certain circumstances exist. The risk must be such that to disregard it is a gross deviation of the standard of conduct expected of reasonable persons in the same situation.

Example: Rod is cleaning his AK-47 and it discharges through his apartment floor killing the occupant in the apartment below him.

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OH  
ORS 163.160

## B. Assault

1. **Assault IV** occurs when someone
  - a. intentionally, knowingly or recklessly causes physical injury to another, **or**
  - b. when someone with criminal negligence causes physical injury by means of a deadly weapon.This is an A misdemeanor.

**Definition :**

"Deadly Weapon" means any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.

Examples: 1) Frank hits Steve square in the nose with his closed fist, causing substantial pain, 2 black eyes and a nose bleed; 2) Elroy received a new gun for Christmas. He set the target up in his backyard, against a fence. On the other side of the fence is the Be Safe Day Care. While target shooting, Elroy fires a shot, which travels through the fence, striking Tommy, a three year old, in the foot. The injury caused Tommy substantial pain and required stitches.

2. Assault IV is a Class C Felony when a person commits assault in the 4th degree **and**
  - a. person previously convicted of assaulting the same victim, **or**
  - b. assault is witnessed by the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim.
3. **Assault III** is the charge when one of the following occurs:
  - a. serious physical injury is caused recklessly with a deadly or dangerous weapon;
  - b. serious physical injury is caused recklessly under circumstances manifesting an extreme indifference to the value of human life;
  - c. physical injury is caused recklessly with a deadly or dangerous weapon under circumstances manifesting an extreme indifference to the value of human life;
  - d. physical injury is intentionally, knowingly or recklessly caused to a public transportation operator while working;
  - e. physical injury is caused intentionally or knowingly while aided by another person actually present;
  - f. physical injury is caused intentionally or knowingly to a person known to be a staff member of the juvenile facility

OH  
ORS 163.165

- g. physical injury is caused intentionally, knowingly or recklessly to a paramedic or EMT while performing official duties;
- h. a person at least 18 years old caused physical injury intentionally or knowingly to a child 10 years old or younger.

This is a C Felony.

Examples:

- 1. A person on a public bus gets mad at the driver and hits him causing physical injury.
- 2. One individual holds the victim down while the other defendant hits him / her.

ORS 163.175

- 4. **Assault II** is the correct charge whenever someone:
  - a. intentionally or knowingly causes serious physical injury; **or**
  - b. intentionally or knowingly causes physical injury with deadly/dangerous weapon; **or**
  - c. recklessly causes serious physical injury with a deadly or dangerous weapon under circumstances manifesting an extreme indifference to the value of human life.

This is a B Felony.

Examples:

- 1. Stab in the arm
- 2. Baseball bat to the head causing physical injury.
- 3. Intentionally gauges out eyes.

ORS 163.185

- 5. **Assault I** is the correct charge whenever someone intentionally causes serious physical injury to another with a deadly or dangerous weapon. This is an A Felony.

Examples: 1) Matt intends to cause serious injury to Larry when he slashes a knife across Larry's face. 2) Curtis stabs Scott in the throat, intending to silence his annoying noises.

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ORS 163.208

- 6. **Assaulting a Public Safety Officer** requires a person to intentionally or knowingly cause physical

injury to a PSO, knowing the victim to be a PSO, and while the PSO (defined as a peace officer, corrections officer, youth corrections officer, parole and probation officer, emergency medical technician or firefighter) is acting in the course of his or her official duty.

Example: Judy is working patrol in a full uniform one day when Eugene sees her and starts to yell obscenities at her. She approaches him and asks him to quiet down. As she reaches him he punches her in the face causing her a black eye. She is unable to work patrol for a few days while her eye recovers. Her back up officer arrests Eugene for assaulting a public safety officer.

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ORS 163.190

7. **Menacing** is the correct charge when a suspect, by word or conduct, intentionally attempts to place a victim in fear of imminent serious physical injury. The victim need not actually be afraid as long as it can be proven that the suspect intended to make victim afraid. Imminent is defined as "near at hand, impending, on the point of happening." The serious physical injury threatened does not have to actually be occurring, but cannot be a threat to cause injury some time in the future. See *Coercion* 163.275 and *Intimidation* 166.155.

Example: Jeremy encounters Arnold one day and decides that it is time Arnold receive some pay back for all of the aggravation he has caused Jeremy over the years. Intending to frighten Arnold, Jeremy picks up an aluminum baseball bat, raises it over his head and tells Arnold he's going to bash in his skull. Jeremy is standing 2-3 feet from Arnold at this time.

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ORS 163.195

8. **Recklessly Endangering Another** occurs when a suspect recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Example: 1) Maria is driving with a BAC of .23. Her baby, Mercedes, is in the car and not secured in an infant restraint seat.

## A2.3 – Kidnapping / Custodial Interference / Sex Crimes / Abandonment / Neglect / Endangering Welfare of a Minor.

#A2-018

OH

ORS 163.225

## C. Kidnap

1. **Kidnapping II** occurs when a suspect has the intent to substantially interfere with the victim's liberty, and without the victim's consent or any legal authority, the suspect either moves the victim from one place to another, or secretly confines the victim where the victim is unlikely to be found. This requires either asportation or secret confinement. The courts in Oregon have held that any movement of the victim's body from one place to another, no matter how short a distance, is sufficient. Merely moving victim's upper body while the lower body remained seated in a car was not sufficient, however.

Example:*An example needs to be added here.*

- child under age of 16 who is taken without consent. ORS 163.215(1)
- Intended Rape

ORS 163.225

2. **Kidnapping I** requires the same intent and activity as Kidnapping II, with the additional requirement that the purpose of the movement or concealment be either to compel payment of ransom, to use the victim as a shield or to cause injury to the victim or to terrorize the victim or someone else.

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OH

ORS 163.245

3. **Custodial interference II** is the correct charge when a suspect knows or has good reason to know that she has no legal right to do so and she takes, entices, or keeps a child from the child's lawful custodian. This requires that the suspect intend to hold the child permanently or for an extended period of time. This is a Class C Felony.

Example: Mom and Dad are divorced. Dad has custody of children and per the court order Mom gets visitation every other weekend from 5 p.m. Friday

until 7 p.m. Sunday. Mom fails to return the children as ordered Sunday night. She knows or has good reason to know that she doesn't have authority to keep them from Dad beyond Sunday at 7 p.m.. If she returns them just a few hours late, this is insufficient to charge. If, however, she keeps the children until Thursday, without court or Dad's permission, she may have violated Custodial Interference statute sufficiently to warrant arrest.

*\*\* Students are also asked to consider that a situation may already be related to a domestic relations case. Is there paperwork?*

4. **Custodial Interference I** is the same as Custodial Interference II except it requires that the suspect remove the child from the state or expose the child to a substantial risk of illness or physical injury. This is a Class B felony.

Example: Non-custodial parent takes child who lives in Portland across the river to Washington state for lunch. Technical violation, but not sufficient to prosecute. If, however, the non-custodial parent takes the child to Duluth, Minnesota for the summer, without permission from court or custodial parent, there is an actionable violation.

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OH  
ORS 163.375

D. **Sex Crimes**

1. **Rape I** occurs when the suspect has sexual intercourse with the victim under certain circumstances. Sexual intercourse requires penetration, however slight, by a penis into a vagina. The circumstances in which intercourse will be considered Rape I are:
  - a. The victim is subjected to forcible compulsion, which is defined as
    - 1) physical force that overcomes earnest resistance,
    - 2) a threat, express or implied, that places victim in fear of immediate or future death or serious physical injury to victim or another person,

- 3) fear that the victim or another person will be kidnapped immediately or in the future.
- b. The victim is **under 12** years of age;
- c. The victim is **under 16** and is related to the suspect by blood or marriage (child, stepchild, sibling);
- d. The victim is incapable of consent because of mental or physical defect, limitation or helplessness. This is a Class A Felony.

Examples: 1) Suspect has sexual intercourse with victim by threatening to kill her if she refuses; 2) Suspect has sexual intercourse with an 11 year old girl; 3) Suspect has consensual sexual intercourse with his 15 year old stepchild; 4) Suspect has sexual intercourse with the victim, who is comatose and a resident of a nursing facility.

ORS 163.365

- 2. **Rape II** occurs when a suspect has sexual intercourse with a victim who is under 14 years old. This is a Class B Felony.

Example: Suspect has consensual sexual intercourse with his family's 13 year old baby-sitter.

ORS 163.335

- 3. **Rape III** is the charge when a suspect has sexual intercourse with a victim who is under 16 years old. This is a Class C Felony.

Example: Twenty year old suspect has consensual sexual intercourse with a 15 year old victim.

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ORS 163.405

- 4. **Sodomy I** is the crime which occurs when a suspect has deviate sexual intercourse with a victim under the same circumstances which were listed in Rape I. **Deviate sexual intercourse** is defined as sexual contact between the sex organs of one person and the mouth or anus of another. **Sexual contact** is defined as any touching of the sexual or intimate parts of a person, or causing such person to touch the sexual or intimate parts of the actor, for the purpose of arousing the sexual desire of either party.

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- a. The victim is subjected to forcible compulsion, which is defined as
  - 1) physical force that overcomes earnest resistance,
  - 2) a threat, express or implied, that places victim in fear of immediate or future death or serious physical injury to victim or another person,
  - 3) fear that the victim or another person will be kidnapped immediately or in the future.
- b. The victim is **under 12** years of age;
- c. The victim is **under 16** and is related to the suspect by blood or marriage (child, stepchild, sibling);
- d. The victim is incapable of consent because of mental or physical defect, limitation or helplessness. This is a Class A Felony.

Examples: 1) Suspect forces Victim to orally copulate him; 2 ) Suspect has deviate intercourse with an 11 year old; 3) Suspect orally copulates his 15 year old sister; 4) Suspect has anal sex with a victim who is severely developmentally disabled.

ORS 163.395

- 5. **Sodomy II** occurs when the Suspect has deviate intercourse with a victim under 14 years old. This is a Class B Felony.

Example: Suspect convinces a 13 year old to orally copulate him.

ORS 163.385

- 6. **Sodomy III** occurs when the Suspect has deviate intercourse with a victim under 18 years old. This is a Class C Felony.

Example: A twenty year old Suspect has consensual anal intercourse with a 15 year old boy.

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ORS 163.427

- 7. **Sexual Abuse I** occurs when the suspect has sexual contact with a victim who is: under 14 years old; subjected to forcible compulsion or incapable of consenting due to mental or physical limitations. Or, if the suspect intentionally causes a victim under 18

ORS 163.425

years old to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desires of a person.

Example: The suspect fondles the breasts of a 13 year old girl for the purpose of arousing himself sexually.

8. **Sexual Abuse II** occurs when the suspect subjects the victim to sexual intercourse, deviate sexual intercourse or penetration of the victim's vagina or anus with a foreign object other than the penis or mouth of the suspect, and the victim does not consent.

Example: Without first obtaining the victim's consent, the suspect inserts a foreign object into the victim's anus.

ORS 163.415

9. **Sexual Abuse III** occurs when the suspect subjects the victim to sexual contact and the victim does not consent or is incapable of consenting because the victim is under 18.

Example: 1)The suspect grabs the victim by the buttocks without the victim's consent. 2) The suspect touches the vagina of a 17 year old

ORS 163.345  
OH

10. **Age as a Defense.** For certain offenses, it is a defense if the only basis for non-consent is age of the victim, if the victim and defendant are within 3 years of age of each other.

This defense only applies to **Rape 2, Rape 3, Sodomy 2, Sodomy 3, and Sex Abuse 1,2 or 3**

Example: If a suspect, age 17, and a victim, age 15, engage in consensual sexual intercourse, the suspect will have a defense to any prosecution for Rape 3 based on that conduct.

11. **Contributing to the Sexual Delinquency of a Minor** is the correct charge to make when a suspect, 18 or older, has sexual intercourse or deviate sexual

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ORS 163.435

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ORS 163.445

#A2-024

OH

ORS 163.465

intercourse, with a victim under 18 years old. This applies to same and opposite sex encounters. This is an A Misdemeanor.

Example: 19 year old female has consensual sexual intercourse with a 17 year old male. The age defense does not apply to this offense.

12. **Sexual Misconduct** occurs whenever a suspect engages in sexual intercourse or deviate intercourse with an unmarried person under 18 years of age. This is a C Misdemeanor.

Example: An 18 year old male who has deviate intercourse with an unmarried 17 year old male is guilty of Sexual Misconduct. The age defense does not apply.

13. **Public Indecency** is the correct charge whenever suspects, while in view of the public or in a public place, engage in sexual or deviate intercourse. This is also the charge whenever a suspect exposes his or her genitals in public with the intent of arousing the sexual desire of the suspect or someone else.

Genitals are defined as the sex organs of a person.

Engaging in sex acts in public does not require proof of an intent to arouse anyone. Exposing genitals does.

Examples: 1) Todd and Susan have intercourse in the living room in front of the picture window, in view of the public, and forget to close the curtains. 2) Willie openly masturbates in front of his picture window, in view of the neighbors, because he gets excited when he has an audience.

REFER TO CITY ORDINANCES FOR SPECIFICS AND ADDITIONAL ELEMENTS.

## E. Family Crimes

#A2-025

1. **Abandonment of a Child** occurs when a parent, lawful guardian or other adult lawfully charged with the care and custody of a child under 15 deserts the child in any place with the intent to abandon the child. This is a Class C Felony.

The courts have been very particular about proof regarding the intent to abandon, and the definition of desert. In one Oregon case, the mother of a 3 year old agreed to sell her daughter for \$1500. The mother never liked the child, and a neighbor suggested that she give the girl up for adoption. The mother said she wouldn't give her up without getting some money. The neighbor told the police. A policeman posed as a person interested in "buying" a child. The mother visited with the officer and his "wife" for 45 minutes to get a feel for her daughter's new home. After 45 minutes she agreed to sell her child. She took the cash and left her daughter. She was arrested outside the house and prosecuted for Child Abandonment. The Appellate Court reversed the decision of the trial court because it found that the mother did not "intend to abandon" the child. She spent 45 minutes assuring herself that the new home was right for her daughter. The mother, in her own pathetic way, was trying to place her daughter in a good home, and did not, therefore, desert her with the intent to abandon her.

Example: The young mother who left her child playing with toys in Toys R Us and then moved with her boyfriend to another state, evidenced the intent to abandon. After she was finally found and arrested, she tearfully said that not a day went by when she didn't think about her 3 year old boy, hoping he was O.K.

2. **Child Neglect I**  
was not included in the original lesson plan.

Example : Police raid a home where suspects are in the process of cooking a batch of methamphetamine

#A2-026  
OH  
ORS 163.545

in what is obviously the bedroom of a small child. The child's bed is 5 feet from the "lab."

3. **Child Neglect II** occurs when a person who has lawful custody or control of a child under 10, with criminal negligence, leaves the child unattended for such amount of time as may likely endanger the health or welfare of the child.

This applies to parents, grandparents and baby-sitters as well. The amount of time is not clearly specified. It is dependent on the circumstances. This is a Class A Misdemeanor.

Examples: 1) On a 90 degree day in July a mother leaves her sleeping infant in a closed car while she runs into the house to make a phone call. She is gone 10 minutes. The temperature inside the car is over 125 degrees when she returns. 2) A baby-sitter leaves a deaf 4 year old child alone for 30 minutes so she can run to the market. 3) A drug using parent after shooting-up passes out and the child wanders outside and is found there by the police.

In each of these examples it is likely that the child's welfare or health would be endangered by the acts of the adults.

#A2-027  
OH  
ORS 163.575

4. **Endangering the Welfare of a Minor** is a complicated statute covering a variety of activities. If a suspect knowingly:

- a. induces, causes or permits an unmarried child under 18 to witness an act of sexual contact or sadomasochistic abuse; **or**
- b. permits a person under 18 years old to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted, **or**
- c. induces, causes or permits a person under 18 years old to participate in gambling, **or**
- d. distributes, sells or causes to be sold, tobacco in any form to a person under 18 years of age, **or**

- e. sells to a person under 18 years of age any device in which tobacco, cocaine, marijuana or any other controlled substance can be burned (bong, chillum, pipe, water pipe, etc.).
- f. Police raid a home where suspects are in the process of cooking a batch of methamphetamine in what is obviously the bedroom of a small child. The child's bed is 5 feet from the "lab."

This is a Class A Misdemeanor, except it will be a violation if the conduct involved is selling tobacco, or the selling of a device for smoking tobacco.

A2.4 – Controlled Substances / Initiating False Report / MIP / Disorderly Conduct /  
Harassment / Telephonic Harassment

**V. Controlled Substances & Alcohol**

**A. Controlled Substances**

Definitions :

Delivery :

Manufacture :

ORS 161.015

Possession :

**1. Delivery of a Controlled Substance**

This offense involves the actual, constructive or attempted transfer from one person to another of a controlled substance. This does not apply to someone who is authorized to administer or dispense, i.e. a physician or pharmacist. Courts in Oregon have found that Possession with intent to deliver constitutes delivery even when no actual transfer is shown. This is commonly called a "Boyd" delivery, named after the case where the Oregon courts expanded the definition of delivery to include possession with the intent to deliver. Further, a suspect who is the agent of the buyer, and just introduces the buyer to the seller, is also guilty of delivery. An attempted transfer is punished the same as a completed transfer. The recipient is not guilty of delivery.

OH

Controlled substances are drugs listed in Schedules I-V of the Federal Controlled Substances Act. Schedule I substances include opiates, heroin and hallucinogenics like LSD, peyote, psilocybin, mescaline and marijuana. Schedule II substances

include cocaine, opium, methadone and methamphetamines. Schedule III substances include stimulants, depressants and narcotics like codeine. Schedule IV and V substances contain only small amounts of narcotics (codeine).

Examples:

- 1) After being stopped on the street, defendant is found to be in possession of six individually packaged bindles of cocaine, an amount consistent with street level dealing, a razor blade and \$308.00 in cash. Defendant cannot explain where he obtained the money and insists he does not take drugs. Even though there is no evidence of an actual transfer, there is evidence of possession with the intent to deliver or an attempted transfer.
- 2) Defendant consents to a search of his house. Police find defendant to be in possession of five grams of heroin, several small, empty ziplock baggies, drugs transaction records, scales, a pager and cell phone. No actual transfer was observed, however, all items found indicate defendant intended to sell the drugs he had in his possession.

#A2-015  
OH  
ORS 475.992,  
475.005

2. **Manufacture of Controlled Substance** occurs when a suspect grows, plants, cultivates, harvests, cooks, synthesizes, prepares or processes a controlled substance. Packaging and labeling constitute manufacture. This does not apply to authorized practitioners, scientists, pharmacists, etc. Examples: 1) A farmer grows one acre of very nice, six foot tall marijuana plants. 2) Police raid a home where suspects are in the process of cooking a batch of methamphetamine in what is obviously the bedroom of a small child. The child's bed is 5 feet from the "lab." 3) Heather gets a prescription for amphetamines from Daddy, who is also her personal physician. She decides she can make some pocket money at college by placing a few tablets into individual small bags. She hopes to give them to her sorority sisters.

#A2-016

OH

ORS 475.992

**Discuss precursor /  
counterfeit substances**

3. **Possession of Controlled Substance**, or PCS, requires that the suspect unlawfully possess a controlled substance. Unlawful possession requires that the suspect either know he is possessing, or intend to possess controlled substances.

Unlawful possession can be established by showing that the suspect knew that what he or she had control of was a controlled substance. Also, evidence that controlled substances were possessed in a container other than the original container will establish knowledge that it is a controlled substance.

Examples :

- Constructive
- Actual

4. **Penalties for Controlled Substance Offenses** vary depending on the Schedule in which the controlled substance is found. Delivery to minors is also an enhanced penalty. Refer to overhead for specifics.

There are factors that will "enhance" the penalties for drug crimes. Some of the aggravating factors are as listed in the handout.

(create handout)

Delivery within 1000 ft. of a school is just one example.

Notice : existence of forfeiture laws.

#A2-017

OH

ORS 475.993

Current Ballot  
measure in 98.  
This is still up for  
review.

5. **Frequenting Place Where Controlled Substances are Used** is the correct charge to bring when a suspect keeps, maintains, frequents or remains at a place while knowingly permitting persons to use controlled substances at the place or to keep or sell them at the place.

This is ordinarily a Class A misdemeanor, unless the controlled substance is < 1 ounce dried marijuana,

in which case the offense is a C violation and the penalty is a fine. (Check with local court systems. )

ADD : reference to child neglect.

Frequenting is defined as repeatedly or habitually visiting or resorting to. There must be more than one occurrence. You must be able to prove that the suspect had some knowledge that there were drugs at the location.

Example: 1) Mick allows Keith to keep his heroin at Mick's house, because Keith's girlfriend does not approve of drug use and throws the stuff away whenever she finds it.

ORS 162.295  
ORS 162.212

#A2-028  
OH  
ORS 471.430

6. **Tampering with drug records.**
7. **Minor in Possession** , or MIP is a very common offense which occurs whenever a minor (under 21) attempts to purchase, purchases or acquires an alcoholic beverage. You can establish possession by proving that the minor accepted or consumed a bottle or drink containing alcohol. This doesn't apply to sacramental wine used during religious services. Minors may possess alcohol in their family home in the presence of their parents, but they can't leave the home with the alcohol. Likewise, only the parent of the individual minor can consent to the minor's possession.

Examples: 1) After the fall homecoming game a group of college freshman have a keg party. All of the students are minors. Any student who consumes the beer or has a cup of the beer in his or her possession is in violation of the statute. 2) Bill is visiting his best friend, Tony. During dinner, Tony's father offers the boys (both under 21) a glass of wine. Both accept. Bill is guilty of MIP. What is Tony's father guilty of? [Furnishing alcohol to a minor- ORS 471.410(2)1]

## VI. Public Order Offenses

#A2-029  
OH  
ORS 166.025

A. **Disorderly Conduct** is a crime with many possible scenarios.

Disorderly conduct crimes are incidents which require that either the defendant **intentionally cause** public inconvenience, annoyance or alarm **or recklessly create a risk of** causing public inconvenience, annoyance or alarm **by**

1. engaging in fighting or in violent tumultuous or threatening behavior : **or**
2. making unreasonable noise; **or**
3. disturbing any lawful assembly of persons without lawful authority; **or**
4. obstructing vehicular or pedestrian traffic on a public way; **or**
5. congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; **or**
6. initiating or circulating a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergence; **or**
7. creating a hazardous or physically offensive condition by any act which the person is not licensed to do.

#### Discussion Points

166.025 (a)

##### Examples of Disorderly Conduct :

(Which section of ORS 166.025 do the following examples violate? If there is not a violation of ORS 166.025, how could the facts be altered to make it a violation of the section?)

1. Three subjects run through the local mall while being rowdy. They yell and fight amongst themselves, knock over garbage cans, and threaten bystanders.
2. Defendant has to deliver a package to a friend. When he pulls up in front of the defendant's apartment building there are no parking spots available. He puts on his hazard lights and runs into the building, parking his car in the only northbound lane of traffic. He is in the building for about five minutes. When he returns, the northbound

166.025(f)

traffic is stopped, and cars are backed up around the block.

3. Yelling "FIRE" in a crowded movie theater.
4. At 3 am, a transient is running through the streets of the commercial section of downtown. He is yelling about his mother. No one lives in this section of town and no one is on the streets. (No violation )

166.025(b)

Same situation but change the time to 11 am and the streets filled with people. (violation)

166.025 (c) & (e)

5. A skinhead group follows all the requirements and gains approval and permits for a rally in a public square. A second group of individuals find the views expressed by the skinheads to be reprehensible, attend the rally, and jeer and heckle the skinhead speakers. Their conduct interrupts the rally. Officers respond to the scene and order the protesters to leave the area. They refuse and continue to yell.
6. Two subjects get into a fight in front of their homes. The fight occurs on the sidewalk. (No violation - No members of the public are affected.)

**How is the right to use self-defense affected by this statute?**

#A2-030  
OH  
ORS 162.375

B. **Initiating a False Report** is the correct charge to make when a suspect knowingly initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property.

ADD: Element regarding initiating false report of Domestic Violence.

Examples: 1) Barb is upset with her boyfriend, Michael. She lends him her car and then calls the sheriff to report that her car was stolen by Michael. Michael is treated to a high risk vehicle stop. 2) Chip pulls a fire alarm at a local business, knowing that the alarm will directly alert the fire department.

#A2-031  
OH  
ORS 166.065

Printed 12/16/98

C. **Harassment.** This offense occurs when a suspect intentionally harasses or annoys another person by:

## Outline and Presentation

1. **Subjecting them to offensive physical contact.** This is the correct charge if there is contact without injury. If the contact is to the sexual or intimate parts of the victim, the offense becomes an A misdemeanor. Ordinarily this is a B misdemeanor.

Examples: 1) Fred spits in Mark's face.  
2) Ken grabs Michelle by the buttocks and squeezes. 3) Joan slaps Al in the face, without causing physical injury.

2. **Publicly insulting by abusive words or gestures in a manner which is likely to provoke a violent response.** This must be more than simply giving someone the "one finger salute." The insult must also be made in public, that is other people must have seen or heard it in addition to the complaining witness.

Example: During a college PE class the suspect loudly and crudely belittles a fellow student by insulting the student's family, the student's sexual experience and orientation, and the student's physique. The student has finally had enough and charges at the suspect.

3. **Subjects another to alarm by conveying a false report, knowing it to be false, concerning death or serious physical injury to a person, which report would reasonably be expected to cause alarm.**

Example: Sam is very angry with Ted, his supervisor. Sam calls Ted and after disguising his voice, Sam purports to be an emergency room physician at a hospital near Ted's home. Sam then tells Ted that Ted's toddler daughter has been seriously injured in an accident and is not expected to live more than an hour. Sam knows that Ted works 1 1/2 hours from his home and the hospital where he believes his daughter is being treated. Ted experiences extreme anguish and alarm.

4. **Subjects another to alarm by conveying a telephonic or written threat to inflict serious physical injury on that person, or to commit a felony involving the person or the property of the person, or the person's family, if the threat would reasonably be expected to cause alarm.** If you knowingly allow a telephone under your control to be used in violation of this section, you are guilty of harassment.

Example: Ken intends to cause Julie to experience alarm and calls her on the phone, threatening to kidnap and torture Julie's little sister, Stacey. Ken's friend, James, knows what Ken plans to do and allows Ken to use his telephone to make the call.

#A2-032  
OH  
ORS 166.090

D. **Telephonic Harassment** occurs when a suspect intentionally harasses or annoys another person by

1. causing the telephone of another person to ring, such caller having no communicative purpose; or
2. causing such other person's telephone to ring and causing such other person to answer it, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.

Examples:

- 1) Subject repeatedly calls victim every ten minutes during the night. Every time the victim answers the phone, the subject hangs up. Upon contact by police, subject admits calling the victim and hanging up. (How would this example be different if instead of hanging up, the subject yelled curse words at the victim after the victim answered the phone? NO VIOLATION )
- 2) Subject used to date victim's daughter. after the two broke up, victim told the subject he was not to come to the house or call on the phone. Victim is the person with lawful authority over the phone. Subject continues to call, and victim answers the phone. (Would the result be different if the victim allowed the calls to be answered by the answering machine or voice-mail? NO VIOLATION)

A2.5 – Weapons / Intimidation / Theft Crimes / Forgery / Negotiating a Bad Check /  
Fraudulent Use of a Credit Card

#A2-033  
OH  
ORS 166.240

**E. Carrying a Concealed Weapon**

1. carries concealed upon the person any
  - a. switchblade knife / butterfly knife
  - b. dirk
  - c. dagger
  - d. ice pick
  - e. slung shot
  - f. metal knuckles
  - g. any instrument similar to a-f which could be used to injure person or property. [make this consistent with ORS 166.240 (1)]
2. Protected areas
  - a. Inside house. OrApp 113.129 State v. Stevens

CHECK WITH AGENCIES ON SPECIFIC PRACTICES.

\* CHECK LOCAL ORDINANCES.

#A2-034  
OH  
ORS 166.250

**F. Unlawful Possession of a Firearm**

1. Knowingly possesses an operable firearm and is
  - a. under 18
  - b. convicted felon
    - 1) add specific definitions
  - c. guilty but insane of a felony
  - d. found to be mentally ill
  - e. concealed upon person without license
    - 1) openly carried in belt holster is not concealed
  - f. concealed and readily accessible within any vehicle which is under the person's control or direction without license

**G. Felon in Possession of a Firearm or Restricted Weapon**

OH

ORS 166.270

1. convicted of felony under Oregon or Federal laws, or any other state.
  - a. add specific definitions of convicted felon.
2. owns or has in possession or under custody or control
  - a. any operable firearm.
  - b. switchblade, blackjack, slung shot, sandclub, sandbag, sap glove, metal knuckles, dirk, dagger or stiletto

#A2-066

OH

ORS 166.155

H. Intimidation II

1. Because of the person's perception of the other's race, color, religion, national origin or sexual orientation:
  - a. tampers or interferes with property, having no right to do so nor reasonable ground to believe the person has such right, with the intent to cause substantial inconvenience to another.
  - b. intentionally subjects another to offensive physical contact
  - c. intentionally subjects another person to alarm by threatening:
    - 1) to inflict serious physical injury upon or to commit a felony affecting such other person or member of the person's family; **OR**
    - 2) to cause substantial damage to the property of the other person or a member of the other person's family

#A2-067  
OH  
ORS 166.165

Assault ?  
Menacing?



I. Intimidation I

1. two or more persons acting together, who because of their perception of a person's race, color, religion, national origin or sexual orientation:
  - a. intentionally, knowingly or recklessly cause physical injury to another person; OR
  - b. with criminal negligence cause physical injury to another person with a deadly weapon
  - c. intentionally place another person in fear of imminent serious physical injury, OR
  - d. do an act which if done by only one person would constitute Intimidation II

Examples :

1. Suspect observes a Native American male in a parking lot. He approaches the male, pulls out a knife and indicates to the victim that he intends to kill him because he hates Native Americans.
2. Suspect enters a Plaid Pantry store carrying a gun and a bag. He approaches a Hispanic clerk, points the gun at her and tells her to put all the money in the bag. On his way out the door he yells the following at her : "You and your Mexican friends should stay south of the border."

The suspect in example #1 clearly committed that crime of menacing because of his perception of the victim's ethnic background. The suspect in example #2, however, is motivated to commit the robbery I / menacing in order to obtain money, rather than to menace the victim based upon his perception of her national origin. It is appropriate to charge suspect #1 with Intimidation I. Suspect #2 should be charged with Robbery I and Menacing.

## VII. Property

**#A2-036**

OH

ORS 164.043

### A. Theft III

1. by means other than extortion
  - a. commits theft as defined in ORS 164.015 and
  - b. total value of property in single or aggregate transaction is <\$50
2. theft = to appropriate property of another to oneself or a third person, **or**
  - a. appropriate =
    - 1) exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property, **OR**
    - 2) dispose of the property of another for the benefit of oneself or a third person

**#A2-037**

OH

ORS 164.045

### B. Theft II

1. by means other than by extortion
  - a. commits theft as defined in ORS 164.015 and
  - b. total value of the property in single or aggregate transaction is > \$50 but <\$200 (theft by receiving) or <\$750 any other case.

Example : Peter enters into a music store, takes five CDs and leaves the store without intending to pay. The total value of the CDs is \$80.00

**#A2-038**

OH

ORS 164.055

### C. Theft I

1. by means other than by extortion commits theft as defined in ORS 164.015 and
  - a. total value of property in single or aggregate transaction is  $\geq$  \$200 (theft by receiving) or  $\geq$  \$750 (other cases), **OR**
  - b. committed during riot, fire, explosion, catastrophe or other emergency in area affected thereby, **OR**
  - c. theft is by receiving committed by buying, selling, borrowing or lending on the security of the property, **OR**
  - d. subject of theft is firearm or explosive, **OR**

## Outline and Presentation

- e. livestock animal, companion animal or wild animal removed from habitat or born of wild animal removed from habitat

Examples : 1) Susan takes \$1,200.00 from the petty cash drawer at work to help pay for her gambling debts. Initially, when she decided to take the money, she intended to pay it back. However, after she gets home, Susan decides to fix the books and hide the fact that she took the money. 2) Bob, while visiting his cousin Joe, finds a gun worth \$125.00 in Joe's bedroom. Bob takes the gun without Joe's permission.

#A2-039  
OH  
ORS 164.057

### D. Aggravated Theft I

- 1. commits theft I of property, other than private vehicle, **AND**
- 2. value of property in single or aggregate transaction is > \$10,000

Example : 1) Dorothy places her wedding ring, worth \$9000.00 in the ashtray of her car before she goes jogging. While Dorothy is jogging, Steve breaks into Dorothy's car, takes her ring and \$1000.00 car stereo.

OH  
ORS 164.065

**Receive shipment of vitamins in mail, addressed to someone else --decide to keep**

ORS 164.075

### E. Theft of Lost, Mislaid Property

- 1. person comes into control of property and
- 2. knows or has good reason to know property
- 3. lost, mislaid or delivered by mistake as to nature or amount of the property or the identity of the recipient  
**IF**
- 4. with intent to deprive owner thereof, person fails to take reasonable measures to restore property to owner

### F. Theft by Extortion

- 1. compels or induces another person to deliver property to the person or a third party by instilling fear that if the property is not delivered the actor or a third person will in the future
  - a. cause physical injury to some person
  - b. cause damage to property, **OR**
  - c. engage in other conduct constituting a crime, **OR**

## Outline and Presentation

- d. accuse some person of a crime or cause criminal charges to be instituted against the person, OR
- e. expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule, OR
- f. cause, or continue a strike, boycott or other collective action injurious to some person's business, OR
- g. testify or provide information or withhold testimony or information with respect to another's legal claim or defense, OR
- h. use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely, OR
- i. inflict any other harm that would not benefit the actor

### ORS 164.085

\*\*\*Notes from meeting say to combine with Theft I,II,III . They stand alone in the book. What to do now.

#### G. Theft by Deception

- 1. obtains property of another with intent to defraud
  - a. creates or confirms another's false impression of law, value , intention or other state of mind, which actor does not believe to be true; OR
  - b. fails to correct false impression which person previously created or confirmed; OR
  - c. prevents another from acquiring information pertinent to the disposition of the property involved, OR
  - d. deals or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is valid or not; OR
  - e. promises performance which the person does not intend to perform or knows will not be performed

Example : 1) David knocks on Brenda's door. Brenda is 85 years old and lives alone. David introduces himself as an independent contractor whose specialty is maintaining and fixing roofs. David tells Brenda her roof is in bad condition. He further tells Brenda for \$750.00, he will

ORS 164.095

**#A2-040**  
OH  
ORS 164.125**#A2-041**  
OH  
ORS 164.135**Ferris Beuller's  
day off.**

clean and fix any problems. Brenda agrees to have the work done. She gives David \$350.00 up-front. David informs Brenda he will start the work in a couple of hours. David never comes back. Brenda later learns David had contracted all of her elderly neighbors and made the same deal, without performing any of the work.

H. **Theft by Receiving**

1. receives, retains, conceals or disposes of property of another knowing or having good reason to know the property was the subject of theft

I. **Theft of Services**

1. with intent to avoid payment, person obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment of services, **OR**
2. having control over disposition of labor or of business, commercial or industrial equipment or facilities of another, person uses or diverts to the use of the person or a third party, such labor, equipment or facilities with the intent to derive for the person or third party a commercial benefit to which not entitled, **OR**
3. absconding without payment or offer to pay for hotel, restaurant or other services
4. obtaining the use of any communication system, including telephone, cable or computer, or obtaining public utility services without payment or offer to pay

Example : Eric stays in a hotel for two nghts. On the third day, Eric leaves early in the morning without paying for his room.

J. **Aggregation**

K. **Unauthorized Use of a Vehicle**

1. takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of owner
2. having custody of vehicle, boat or airplane pursuant to agreement with owner or another to perform a specific service for compensation (re: maintenance, repair or use) the person intentionally uses, or operates it without consent, for the person's own

purpose in a manner constituting gross deviation from the agreed purpose, OR

3. person knowingly retains or withholds possession of vehicle from owner without consent for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement

## **VIII. Fraud or Deception**

### **Definitions :**

**“Written Instrument”** means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

To **“Falsely Make”** a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

To **“Falsely Complete”** a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

To **“Falsely Alter”** a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all

respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

“Utter” means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

“Forged Instrument” means a written instrument which has been falsely made, completed or altered.

ORS 165.007

A. **Forgery II**

1. with intent to injure or defraud
  - a. falsely makes, completes or alters a written instrument, OR
  - b. utters a written instrument the person knows to be forged

Example : Jason, without Nancy's permission, takes one of Nancy's checks and makes it out to himself for \$10.00

#A2-042  
OH  
ORS 165.013

B. **Forgery I**

1. forgery II + the written instrument is any of the following:
  - a. money, securities, postage or revenue stamps, or other government issued instruments
  - b. part of an issue of stock, bonds, etc.
  - c. deed, will, codicil, contract or assignment
  - d. check or credit card purchase slip  $\geq$  \$750
  - e. public record
  - f. against multiple victims in 30 day period
  - g. against same victim within 180 day period

Examples : 1) Jason, without Nancy's permission, takes three of Nancy's checks, makes them out to himself for \$500.00 each. 2) Jason, without Nancy's permission, takes three of Nancy's checks, makes them out to his brother Bill, for \$500.00 each. Bill knowing that his brother filled in the information on each check without Nancy's permission, deposits the checks into his bank account. 3) Mark, who has a warrant for his arrest, takes his roommates driver's license without his roommates' permission. Mark cuts out his roommates' picture and replaces it with his own.

#A2-043  
OH  
ORS 165.055

C. **Fraudulent Use of a Credit Card**

1. with intent to injure or defraud, uses credit card for purpose of obtaining property or services with knowledge that:
  - a. card stolen or forged; or
  - b. card revoked or canceled; or
  - c. for any other reason the use is unauthorized by issuer or card holder

Example : Gabriela trades heroin for a stolen credit card. In the next two hours, Gabriela makes \$2000 worth of purchases on the stolen credit card.

#A2-044  
OH  
ORS 165.065

D. **Negotiating a Bad Check**

1. makes, draws or utters a check or similar order for payment of money, knowing it will not be honored by drawee
2. *prima facie* evidence:
  - a. drawer has no account with drawee at time check drawn or uttered;
  - b. payment refused by drawee for lack of funds, upon presentation within 30 days after date of utterance, and the drawer fails to make good within 10 days of receiving notice of refusal.

Example : Chris writes a check for a \$1,8500.00 stereo on an account he knows he closed two years ago.

A2.6 – Arson / Reckless Burning / Criminal Mischief / Criminal Trespass / Burglary / Robbery

## IX. Arson & Criminal Mischief

**PO #45**  
OH  
ORS 164.315

**PO #46**  
OH  
ORS 164.325

**PO #47**  
OH  
ORS 164.335

**PO #48**  
OH  
ORS 164.345

**PO #49**  
OH  
ORS 164.354

**A. Arson II**

1. by starting a fire or causing an explosion, the person intentionally damages any building of another that is not protected property

**B. Arson I**

1. by starting a fire or causing an explosion the person intentionally damages:
  - a. protected property of another
  - b. any property, whether the property of the person or another, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage;
  - c. any property, whether property of person or another, and recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire.

**C. Reckless Burning**

1. recklessly damages property of another by fire or explosion

**D. Criminal Mischief III**

1. with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another

**E. Criminal Mischief II**

1. violates 163.345 + damage exceeds \$100, OR
2. having no right to do so nor reasonable ground to believe that the person has such right, the person intentionally damages property of another, or the

## Outline and Presentation

person **recklessly** damages property of another in an amount exceeding \$100

**PO #50**  
OH  
ORS 164.365

### **F. Criminal Mischief I**

1. with intent to damage property, and having no right to do so nor reasonable ground to believe that the person has such right:
  - a. damages or destroys property of another
    - 1) in amount exceeding \$500
    - 2) by means of explosion
    - 3) by starting fire in an institution while committed to and confined in institution
    - 4) livestock
    - 5) property of public utility, telecommunications utility, railroad, public transportation facility or medical facility used in direct service to the public
    - 6) police animal and animal suffers death or serious physical injury, **OR**
    - 7) intentionally interfering with, obstructing or adulterating in any manner the service of a public utility, etc.
  - b. intentionally uses, manipulates, arranges or rearranges the property of a public utility, etc. so to interfere with its efficiency

ORS 164.369

### **G. Interfering with a Police Animal**

1. intentionally or knowingly injures or attempts to injure an animal the person knows or reasonably should know is a police animal while the animal is being used in the lawful discharge of its duty

**PO #51**  
OH  
ORS 164.245

### **H. Criminal Trespass II**

1. person enters or remains unlawfully in or upon premises

**PO #52**  
OH  
ORS 164.255

### **I. Criminal Trespass I**

1. enters or remains unlawfully in a dwelling, **OR**
2. having been denied future entry to a building pursuant to merchant's notice of trespass, reenters building during hours when the building is open to the public with the intent to commit theft therein

PO #53  
OH  
ORS 164.215

Example : A suspect previously trespassed from a shopping store and subsequently re-enters with the intent to commit theft. (Please Note : This can no longer be tried as Burglary 2)

J. **Burglary II**

1. person enters or remains unlawfully in a building with intent to commit a crime therein

Examples : 1) Harry smashes a window to a small convenience store. He and Chester enter the store and take 48 cartons of cigarettes. 2) Keith breaks into an unattached garage next to a residence. He takes a bicycle. 3) June breaks the lock to a storage facility and takes several items.

PO #54  
OH  
ORS 164.225

K. **Burglary I**

1. violates ORS 164.215 + building is a dwelling, OR if in effecting entry or while in a building or in immediate flight there from the person:
  - a. is armed with burglar tools or deadly weapon;  
**OR**
  - b. causes or attempts to cause physical injury to any person; OR
  - c. uses or threatens to use a dangerous weapon

Examples : 1) Calvin breaks into the residence of his ex-wife and proceeds to choke his ex-wife's lover. 2) George breaks into a garage that is attached to a residence. He takes tools from the garage. 3) Casey's upper body is inside the window of a residence that he intends to burglarize. The resident of the house is able to prevent him from entering any further by hitting him over the head with a frying pan.

PO #55  
OH  
ORS 164.395

There is no  
attempted  
Robbery III.

L. **Robbery III**

1. in course of committing or attempting to commit theft person uses or threatens immediate use of physical force upon another person with intent to:
  - a. prevent or overcome resistance to taking of property or retention of property immediately after taking; OR

- b. compels owner or another to deliver property or engage in other conduct which might aid in commission of theft.

Example : 1) Candy leaves Nordstrom with 2 purses that she has not paid for. When store security approaches her, she hits and kicks at the security officer.

**PO #56**  
OH  
ORS 164.405

**M. Robbery II**

- 1. violates 164.395 + represents by word or conduct that person armed with what purports to be dangerous or deadly weapon, OR
- 2. is aided by another person actually present

Examples : 1) Forrest and Mike approach Jerry and demand Jerry's bike. Jerry refuses to give up the bike. Forrest and Mike push and kick Jerry and take his bike. 2) Eric approaches a clerk at a 7-11 and advises the clerk that he will shoot him if he does not hand over the money in the till. 3) Judy approaches a teller and hands her a note indicating that she has a bomb in her purse which will detonate in the event that the teller refuses to hand over money.

**PO #57**  
OH  
ORS 164.395

**N. Robbery I**

- 1. violates 164.395 +
  - a. armed with deadly weapon, OR
  - b. uses or attempts to use a dangerous weapon, OR
  - c. causes or attempts to cause serious physical injury to any person

Examples : 1) Harold approaches Kim with a loaded glock handgun and demands her purse. 2) Jeff puts a knife to Tomi's throat and demands the cash in her till. 3) Devon takes a lawnmower from Fred Meyer. He places the lawnmower in his truck. Two Fred Meyer employees attempt to stop Devon by placing their bodies in front of the vehicle. Devon guns the engine and hits one of the employees causing serious physical injury.

A2.7 – Escape / Resisting / Obstructing / Hindering / Animal Abuse & Neglect

## X. State and Public Justice

**#A2-058**

OH

ORS 162.145

**A. Escape III**

1. person escapes from custody
2. Defense -- person escaping or attempting to escape from custody pursuant to illegal arrest
3. Custody = imposition of actual or constructive restraint by peace officer pursuant to arrest or court order (doesn't include juvenile facility, correctional facility or state hospital)

**#A2-059**

OH

ORS 162.155

**B. Escape II**

1. person uses or threatens to use physical force escaping from custody, OR
2. having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof, OR
3. person escapes from correctional facility; OR
4. while under jurisdiction of Psychiatric Security Review BD person departs, is absent from or fails to return to this state without authorization of the BD

**#A2-060**

OH

ORS 162.165

ORS 162.205

**C. Escape I**

1. aided by another person actually present, person uses or threatens to use physical force in escaping from custody or correctional facility; OR
2. person uses or threatens to use dangerous or deadly weapon escaping from custody or correctional facility

**D. Failure to Appear**

1. having been released by court order from correctional facility or from custody upon condition that they reappear personally as directed, the person intentionally fails to appear
2. underlying charge must be felony

ORS 162.195

**E. Failure to Appear II**

1. having been released by court order from correctional facility or from custody upon condition that they reappear personally as directed, the person intentionally fails to appear
2. underlying charge is misdemeanor or violation

#A2-061

OH

ORS 162.235

**F. Obstructing Governmental or Judicial Administration**

1. intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of:
  - a. intimidation
  - b. force
  - c. physical or economic interference or
  - d. obstacle
2. doesn't apply to obstruction or interference with making of an arrest

ORS 162.247

**G. Interfering with a police officer**

1. A person commits the crime of interfering with a peace officer if the person, knowing that another person is a peace officer ;
  - a. Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer from performing the lawful duties of the peace officer with regards to another person; or
  - b. Refuses to obey a lawful order by the peace officer.
2. Interfering with a peace officers is a Class A misdemeanor.
3. This section does not apply in situations in which a peace officer is making an arrest.

#A2-062

OH

ORS 162.315

**H. Resisting Arrest**

1. intentionally resists person known to be peace officer in making an arrest
2. "Resisting" = use or threatened use of violence or force that creates a substantial risk of injury to any person.

#A2-063

OH

ORS 162.325

**I. Hindering Prosecution**

1. with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a felony, OR

OH / Graph

2. with intent to assist a person who has committed a felony in profiting or benefiting from the commission of the crime, the person:
  - a. harbors or conceals;
  - b. warns such person of impending discovery or apprehension;
  - c. provides aid, i.e. money, transportation, weapon, disguise or other means of avoiding discovery or apprehension;
  - d. prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in discovery or apprehension of such person;
  - e. suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
  - f. aids such person in securing or protecting the proceeds of the crime

**J. Giving false information to a police officer**

*Greg Moawad is working on this section .*

**XI. Health, Decency and Animals**

**#A2-064**

OH

ORS 167.315

ORS 167.320

ORS 167.322

**#A2-065**

OH

ORS 167.325

"Vicky Kittles"

**A. Animal Abuse II**

1. intentionally, knowingly or recklessly causes physical injury to an animal

**B. Animal Abuse I**

1. intentionally, knowingly or recklessly
  - a. causes serious physical injury to an animal
  - b. cruelly causes death of an animal

**C. Aggravated Animal Abuse I**

1. maliciously kills an animal, OR
2. intentionally or knowingly tortures an animal

**D. Animal Neglect II**

1. intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such person's custody or control

ORS 167.330

E. **Animal Neglect I**

1. intentionally, knowingly, recklessly or with criminal negligence
2. fails to provide minimum care for animal under person's custody or control
3. failure results in serious physical injury or death to animal

A2.8 – Bias Crime Reporting / Choice of Evils / Duress / Entrapment / Use of Force

## XII. MISCELLANEOUS PROVISIONS

**#A2-068**

OH

Handout

ORS 181.550(1) (c)

**A. Bias Crime Reporting Requirement**

1. Agencies shall report statistics concerning crimes motivated by prejudice based on the victim's perceived:
  - a. race
  - b. color
  - c. religion
  - d. national origin
  - e. sexual orientation
  - f. marital status
  - g. political affiliation or beliefs
  - h. activity in or on behalf of or against a labor organization
  - i. physical or mental handicap
  - j. age
  - k. economic or social status
  - l. citizenship

**C. Duress Defense**

1. not a crime if actor coerced to do so by
  - a. use or threatened use of unlawful physical force
  - b. upon actor or third person
  - c. force of such nature or degree as to overcome earnest resistance
2. Does not apply to murder
3. Not a defense for someone who intentionally or recklessly placed themselves in a situation where it was probable that they would be subjected to duress
4. Generally not a defense for a spouse acting under orders from spouse, unless threat or use of physical force

**D. Entrapment**

1. not crime if actor induced to do act by law enforcement official, or person acting in cooperation

with law enforcement, for purpose of obtaining evidence to be used against actor in criminal prosecution.

2. induced = actor did not contemplate and **would not otherwise have engaged in the proscribed conduct**
3. Merely giving actor opportunity to commit offense doesn't amount to entrapment

### XIII. Justification

#A2-074  
OH  
ORS 161.205

A. **Use of Physical Force** – Generally

1. parent, guardian, supervising person
  - a. may use **reasonable force**
  - b. when and to extent **reasonably believes necessary**
  - c. to maintain discipline or promote welfare of minor
2. applies to teachers in school, at school events
3. authorized official of jail, prison or correctional facility
  - a. may use force when reasonably believes it is necessary to maintain order and discipline
4. common carriers
  - a. reasonably believe necessary to maintain order
  - b. deadly force only when the person reasonably believes it is necessary to prevent death or serious physical injury
5. person acting under reasonable belief another is **about to commit suicide**, (unless authorized by the Assisted Suicide Law) or inflict serious physical self-injury
  - a. **force to extent reasonably believe necessary to thwart result**
6. **in self-defense or in defending a third person, property, in making arrest or in preventing an escape**

ORS 161.209

B. **In Defense of Persons**

1. from what person **reasonably believes** to be the **use or imminent use** of unlawful physical force
2. may use a degree of force which person **reasonably believes necessary** for the purpose

ORS 161.215

C. **Limitations of use of force in Defense of Persons**

1. with intent to cause physical injury or death to another, the **person provokes** the use of unlawful physical force by that person, OR
2. the person is the **initial aggressor**, unless they **withdraw** from encounter and **effectively communicate** to the other person their intent to do so, and the other person (original victim) continues or threatens to continue the unlawful use of force
3. force involved is product of combat by agreement (**mutual combat**)

ORS 161.219

D. **Limitations on Use of Deadly Force in Defense of Person**

1. not justified unless person reasonably believes the other person is:
  - a. **committing or attempting to commit a felony involving use or threatened imminent use of physical force against a person**; OR
  - b. committing or attempting to commit a **burglary in a dwelling**;
  - c. **using or about to use unlawful deadly force against a person**

ORS 161.225

E. **Use of Force in Defense of Premises**

1. person in **lawful possession or control** of premises
2. when and to extent **reasonably believes necessary**
3. **to prevent or terminate** what the person reasonably believes to be
4. commission or attempted commission of a **criminal trespass** in or upon the premises
5. **deadly physical force** only when person reasonably believes necessary to prevent commission of **arson or felony by force and violence by trespasser**, or in defense of a person

ORS 161.229

F. **Use of Force in Defense of Property**

1. **other than deadly force**
2. upon another person and to extent **reasonably believes necessary** to prevent or terminate the commission or attempted commission by the other person of **theft or criminal mischief of property**

ORS 161.235

**G. Use of Force in Making an Arrest or in Preventing an Escape**

1. only when and to the extent that the peace officer reasonably believes it necessary :
  - a. to make an arrest or prevent the escape from custody of an arrested person unless the peace officer knows the arrest is unlawful; OR
  - b. for self-defense or to defend a third person from what the officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape

ORS 161.239

**H. Use of Deadly Force in Making an Arrest or In Preventing an Escape**

1. peace officer may only use when officer reasonably believes:
  - a. crime committed by person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person; OR
  - b. crime committed by the person was kidnapping, arson, escape I, burglary I or any attempt to commit such a crime; OR
  - c. when the use of deadly physical force is necessary to defend the officer or another from the use or threatened imminent use of deadly physical force; OR
  - d. the crime committed was a felony or an attempted felony and under the totality of the circumstances existing at that time and place, the use of force was necessary
  - e. the officer's life or personal safety is endangered
  - f. will not justify reckless or criminal conduct by officer amounting to an offense against or with respect to innocent persons whom the officer is not seeking to arrest or retain in custody

ORS 161.245

**I. Reasonable Belief**

## Outline and Presentation

1. a reasonable belief in facts or circumstances which **if true would constitute an offense**
2. if the believed facts or circumstances would not constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody,
3. **peace officer making: an arrest is justified in using physical force unless the arrest is unlawful and the officer knows it is unlawful**

ORS 161.249

### J. Use of Force by Private Person Assisting an Arrest

1. a person who has been **directed by an officer to assist** the peace officer to make an arrest or to prevent an escape from custody is justified in using force when and to extent person **reasonably believes force necessary to carry out officer's direction**
2. when directed by peace officer to assist person **may use deadly force** only when:
  - a. person **reasonably believes** deadly force **necessary for self-defense or to defend a third person** from what the person reasonably believes to be the **use or imminent use of deadly force**; OR
  - b. person is **directed or authorized** by officer to use deadly force **unless the person knows that the officer is not authorized to use deadly force under the circumstances**

ORS 161.255

### K. Use of Force by Private Person Making Citizen's Arrest

1. private person acting on their own account is justified in using force when and to the extent they **reasonably believe** it is necessary to make an arrest or to prevent the escape from custody of an arrested person
2. justified in using **deadly force** only when the person **reasonably believes** it necessary for self-defense or to defend third person from use or imminent use of deadly physical force

ORS 161.260

### L. Use of Force in Resisting Arrest Prohibited

## Outline and Presentation

1. a person may not use force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer
2. whether the arrest is lawful or unlawful

ORS 161.265

**Use of Force  
Handout**

Jeopardy II

### M. Use of Force to Prevent Escape

1. a guard or peace officer employed in a correctional facility is justified in using physical force **including deadly force** when and to the extent that the guard or officer reasonably believes necessary to prevent escape of prisoner

## IVX. REVIEW